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*Attorneys for Plaintiff
Executive Risk Indemnity Inc.*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
EXECUTIVE RISK INDEMNITY INC.,	:
	: 08 Civ. 1822 (DLC/AJP)
Plaintiff,	:
-v-	:
	: <u>AFFIDAVIT</u>
WESTPORT INSURANCE CORPORATION,	:
	:
Defendants.	:
-----X	
STATE OF NEW YORK)	
) ss.:	
COUNTY OF NEW YORK)	


WILLIAM B. POLLARD, III, being duly sworn, deposes and says:

1. I am a member of Kornstein Veisz Wexler & Pollard, LLP, attorneys for Executive Risk Indemnity Inc. ("ERII"), the Plaintiff in this action. I make this affidavit in opposition to Westport Insurance Corporation's ("Westport") motion to stay this action.

2. Annexed to this Affidavit are true and correct copies of the following documents:

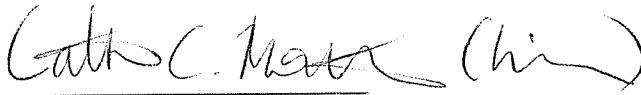
Exhibit A: February 11, 2005 E-mail from Jane Mandigo (Westport Insurance Corporation) to Alfred Wilcox (Pepper Hamilton, LLP) (PH INS 00000894) which was produced by Pepper Hamilton, LLP in the state court litigation related to this action; and

Exhibit B: The Request for Judicial Intervention filed by ERII in Supreme Court,
New York County



WILLIAM B. POLLARD, III

Sworn to before me this
14th day of March, 2008



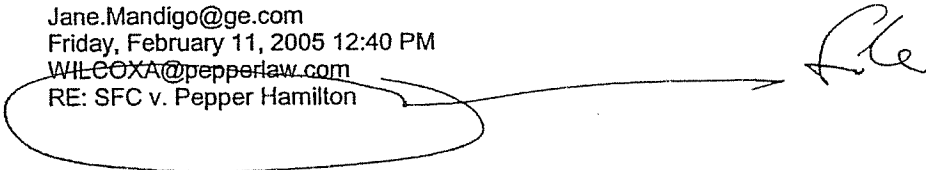
NOTARY PUBLIC

CATHERINE C. MONTJAR
Notary Public, State of New York
No. 02MO6125728
Qualified in New York County
Commission Expires April 25, 20 09

Exhibit A

Wilcox, Alfred

From: Jane.Mandigo@ge.com
Sent: Friday, February 11, 2005 12:40 PM
To: WILCOXA@pepperlaw.com
Subject: RE: SFC v. Pepper Hamilton



Mr. Wilcox:

Westport does not contend that Pepper should have given Westport notice of the SFC "circumstances" in April 2002.

Jane A. Mandigo
GE Insurance Solutions
Professional Liability Claims Consultant
T- 913-676-5230
F- 877-880-1590
jane.mandigo@ge.com
Westport Insurance Corporation

-----Original Message-----

From: Wilcox, Alfred [mailto:WILCOXA@pepperlaw.com]
Sent: Thursday, February 10, 2005 2:12 PM
To: 'Jane.Mandigo@ge.com'
Subject: SFC v. Pepper Hamilton

One of the bases Westport has asserted in its reservation of rights letter as to why Westport may not be liable to defend and indemnify Pepper with respect to the SFC claim is Westport's suggestion that Roderick Gagne's April, 2002 memorandum to Pepper's executive partner and chair of its Finance Committee, in which Mr. Gagne hypothesizes that Pepper might be sued as a "deep pocket" associated with SFC, establishes that Pepper knew of the SFC "circumstance" at that time, and could have notified Westport of the "circumstance" at that time. As I understand the "Continuity of Coverage" clause in each of Pepper's policies with Westport, if Pepper has maintained continuous coverage with Westport between the time when a "circumstance" could have been advised and the time that an actual claim was advised, then the coverage in effect at the time of the knowledge of the "circumstance" will apply, rather than the coverage in effect at the time of the advice of the threatened (or actual) claim. I do not agree with Westport that Mr. Gagne's speculations in April 2002 that some unidentified party might assert a claim against Pepper under some unidentified theory, simply because Pepper was a "deep pocket" close to SFC and SFC might default on hundreds of millions of dollars in financing, rises to the level of a "circumstance" of which an insured could or should give its insurer notice. But assuming, for the sake of discussion, that such speculation should provide the basis for notice to Pepper's insurer, please confirm to me that Pepper would then be entitled to the coverage terms of the policy in effect as of April, 2002 (i.e., Pepper would have \$20 million in coverage from Westport, rather than the \$10 million in effect in 2004 when the Trustee first threatened a claim. In the alternative, please confirm to me that Westport does not contend that Pepper should have given Westport notice of the SFC "circumstances" in April 2002, so as to affect in any way Pepper's coverage under the Westport policy in effect in 2004, when notice was given.

This email is for the use of the intended recipient(s) only. If you have received this email in error, please notify the sender immediately and then delete it. If you are not the intended recipient, you must not keep, use, disclose, copy or distribute this email without the author's prior permission. We have taken precautions to minimize the risk of transmitting software viruses, but we advise you to carry out your own virus checks on any attachment to this message. We cannot accept liability for any loss or

Exhibit B

001267

REQUEST FOR JUDICIAL INTERVENTION

SUPREME COURT, NEW YORK COUNTY

INDEX NO. DATE PURCHASED: 08-600200
January 23, 2008

For Clerk Only

=====X
PLAINTIFF(S): EXECUTIVE RISK INDEMNITY INC._____
IAS entry date

DEFENDANT(S): WESPORT INSURANCE CORPORATION

Judge Assigned_____
RJI Date=====X
Date issue joined (2/18) Bill of Particulars served (Y/N): N

NATURE OF JUDICIAL INTERVENTION (check ONE box only and enter information)

- ☐ Request for preliminary conference
☐ Note of issue and/or certificate of readiness
☐ Notice of Motion (return date _____) Relief sought _____
☐ Order to show cause (clerk enter return date _____)
☐ Relief sought _____
☐ Other ex parte application (specify _____)
☐ Notice of petition (return date _____) Relief sought _____
☐ Notice of medical or dental malpractice action (specify _____)
☐ Statement of net worth
☐ Writ of habeas corpus
☒ XXX Other (specify FOR ASSIGNMENT AS A RELATED CASE)

NATURE OF ACTION OR PROCEEDING (check ONE box only)

MATRIMONIAL		TORTS		DATE NUMBER (YYYY) YEAR MONTH	
<input type="checkbox"/> Contested	- CM	<input type="checkbox"/> Malpractice		<input type="checkbox"/> TOTAL	- MM
<input type="checkbox"/> Uncontested	- UM	<input type="checkbox"/> Medical/Podiatric		<input type="checkbox"/> CHECK	- DM
COMMERCIAL		<input type="checkbox"/> *Other Professional		<input type="checkbox"/> CHECK	- OPM
<input type="checkbox"/> Contract	- CONT	<input type="checkbox"/> Motor Vehicle		<input type="checkbox"/> CHECK	- MV
<input type="checkbox"/> Corporate	- CORP	<input type="checkbox"/> Products Liability		<input type="checkbox"/> CHECK	- PL
<input checked="" type="checkbox"/> XXX Insurance (where insurer is a party, except arbitration)	- INS	<input type="checkbox"/> Environmental		<input type="checkbox"/> CHECK	- EN
<input type="checkbox"/> UCC (including sales, negotiable instruments)	- UCC	<input type="checkbox"/> Asbestos		<input type="checkbox"/> CHECK	- ASB
<input type="checkbox"/> *Other Commercial	- OC	<input type="checkbox"/> Breast Implant		<input type="checkbox"/> CHECK	- BI
REAL PROPERTY		<input type="checkbox"/> Other Negligence		<input type="checkbox"/> CHECK	- OTN
<input type="checkbox"/> Tax Certiorari	- TAX	<input type="checkbox"/> *Other Tort (including intentional)		<input type="checkbox"/> CHECK	- OT
<input type="checkbox"/> Foreclosure	- FOR	SPECIAL PROCEEDINGS		<input type="checkbox"/> CHECK	- ART 75
<input type="checkbox"/> Condemnation	- COND	<input type="checkbox"/> Art. 75 (Arbitration)		<input type="checkbox"/> CHECK	- ART 77
<input type="checkbox"/> Landlord/Tenant	- LT	<input type="checkbox"/> Art. 77 (Trusts)		<input type="checkbox"/> CHECK	- ART 78
<input type="checkbox"/> *Other Real Property	- ORP	<input type="checkbox"/> Article 78		<input type="checkbox"/> CHECK	- ELEC
OTHER MATTERS		<input type="checkbox"/> Election Law		<input type="checkbox"/> CHECK	- GUARD81
<input type="checkbox"/> *	- OTH	<input type="checkbox"/> Guardianship (MHL Art. 81)		<input type="checkbox"/> CHECK	- MHYG
*If asterisk used, please specify		<input type="checkbox"/> Other Mental Hygiene		<input type="checkbox"/> CHECK	- OSP
		<input type="checkbox"/> *Other Special Proceeding		<input type="checkbox"/> CHECK	

Check "YES" or "NO" for each of the following questions.

If this action/proceeding against a

YES NO ___ XXX Municipality: (specify _____)	YES NO ___ XXX Public Authority (specify _____)
--	---

YES NO

XXX ___ Does this action/proceeding seek equitable relief

___ XXX Does this action/proceeding seek recovery for personal injury

___ XXX Does this action/proceeding seek recovery for property damage

Pre-Note Time Frames:

(This applies to all cases except contested matrimonials and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

___ Expedited: 0-8 months XXX Standard 9-12 months ___ Complex 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served? ___ No ___ Yes, Date _____

Was a Notice of No Necessity filed? ___ No ___ Yes, Date _____

ATTORNEY(S) FOR PLAINTIFF(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
[]	WILLIAM B. POLLARD, III Kornstein Veisz Wexler & Pollard, LLP	757 Third Avenue New York, NY 10017	212-418-8600
[]			

ATTORNEY(S) FOR DEFENDANT(S):

<u>Self Rep.*</u>	<u>Name</u>	<u>Address</u>	<u>Phone #</u>
[]	N/A		
[]			

* Self Represented: parties representing themselves, without an attorney, should check "Self Rep." box and enter their name, address, and phone # in the space provided above for attorneys.

NAMES OF INSURANCE CARRIERS

NONE

RELATED CASES (IF NONE, write "NONE" below)

<u>Title</u>	<u>Index #</u>	<u>Court</u>	<u>Nature of relationship</u>
Executive Risk Indemnity	603624-05E	Supreme Court/	Related parties and subject
Inc. v. Pepper Hamilton LLP		New York County	matter
et al.		Part 3	

I AFFIRM UNDER THE PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: January 23, 2008

William B. Pollard, III

William B. Pollard, III
KORNSTEIN VEISZ WEXLER & POLLARD, LLP
Attorney for
757 Third Avenue
New York, New York 10017
(212) 418-8600

ATTAPh RIDER SHEET IF NECESSARY TO PROVIDE REQUIRED INFORMATION.